

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

LORAN THOMPSON & SHERRY DELISLE,)
)
 Petitioners,)
)
 v.) Docket No. 27015-17.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

This case is before us on the Commissioner's-motion for summary judgment. The Commissioner argues that he should be granted summary judgment because Mr. Thompson and Ms. Delisle are subject to U.S. Federal tax laws and received taxable income in 2015. Mr. Thompson and Ms. Delisle argue that, as members of the Haudenosaunee or Six Nations of the Iroquois Confederacy, they are exempted from Federal tax. Because no treaty exists exempting these individuals from Federal tax and Mr. Thompson and Ms. Delisle did not derive their income directly from allotted tribal land, we grant the Commissioner's motion for summary judgment.

Background

The Commissioner filed three requests for admission to which Mr. Thompson and Ms. Delisle did not respond. As a result of their failure to respond, these requests for admission are deemed admitted under Rule 90(c)¹ and the facts included in them are conclusively established.²

During all relevant times, Mr. Thompson and Ms. Delisle were married, members of the Saint Regis Mohawk Tribe (Mohawk Tribe), and lived on the tribe's Akwesasne Reservation located in the State of New York.

¹Rule 90(c) provides that "[e]ach matter is deemed admitted unless, within 30 days after service of the request * * * the party to whom the request is directed serves upon the requesting party: (1) A written answer * * * or (2) an objection".

Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

²Rule 90(f).

The Mohawk Tribe owns and holds title to the land on the Akwesasne Reservation. The land is not held in trust by the Federal government and allotted to individual tribal members. Individual tribal members, like Ms. Thompson and Ms. Delisle, may hold deeds issued from the tribe to occupy land on the Akwesasne Reservation; however, these individuals do not have the right to sell or convey this land.

Mr. Thompson operated a telecommunications business on the Akwesasne Reservation. On September 5, 2012, Mr. Thompson received a certificate from the Mohawk Tribe allowing him to do business as “Flint Communications.”

Operating as the owner of Flint Communications, Mr. Thompson entered into an agreement with Convergence Technologies, Inc. (CTI). Under the agreement, CTI would provide Flint Communications credit card services in exchange for payment. Mr. Thompson submitted a Form W-9, Request for Taxpayer Identification Number and Certification, with the CTI agreement.

Mr. Thompson earned income from Flint Communications. Mr. Thompson received a Form 1099-K, Payment Card and Third Party Network Transactions, from CTI listing \$4,628³ of income in 2015. He also received a Form 1099-K from the First National Bank of Omaha listing \$78,541 of income for 2015.

During 2015, Mr. Thompson and Ms. Delisle owned apartments located on the Akwesasne Reservation, which they rented to residents. Mr. Thompson and Ms. Delisle earned rental income from various sources and received Forms 1099-MISC, Miscellaneous Income, for rental payments from the Department of Social Services in Franklin County, Housing Trust Fund Corp., and the Akwesasne Housing Authority.

Mr. Thompson and Ms. Delisle filed their 2015 Form 1040, U.S. Individual Income Tax Return, as married filed jointly. They attached an Other Income Summary Attachment to their Form 1040, listing the Form 1099-K income from Flint Communications and rental income. Mr. Thompson and Ms. Delisle attached other statements to their return claiming they do not owe Federal tax on this income because it was “derived from Indian lands.”

On October 2, 2017, the Commissioner mailed Mr. Thompson and Ms. Delisle a notice of deficiency for 2015. The Commissioner determined deficiencies stemming from Flint Communications income, rental income, and social security/railroad retirement income. The Commissioner also asserted section 6662(a) accuracy-related penalties.

³All monetary amounts are rounded to the nearest dollar.

Mr. Thompson and Ms. Delisle timely petitioned this Court on December 28, 2017. In their petition, Mr. Thompson and Ms. Delisle claim they do not owe Federal income taxes because they are enrolled members of the Mohawk Tribe and they derived their income from tribal land.

The Commissioner filed a motion for summary judgment asking the Court to rule as a matter of law that Mr. Thompson and Ms. Delisle must pay Federal income tax, despite their status as enrolled tribal members. In his motion, the Commissioner conceded the accuracy related penalties determined in the notice of deficiency because the Commissioner cannot meet his burden of production under sections 7491(c) and 6751(b). The petitioners responded with their opposition to the motion for summary judgment. In it, Mr. Thompson and Ms. Delisle reiterate their claim that they do not owe Federal income tax as members of the Haudenosaunee.

Discussion

Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in a controversy. We may grant summary judgment only if there is no genuine dispute of material fact.⁴ The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute of material fact.⁵ When a motion for summary judgment is properly made and supported, the nonmoving party may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts showing a genuine dispute.⁶

American Indians have been U.S. citizens since 1924.⁷ They are generally subject to tax laws like any other U.S. citizen, unless there exists a “clearly expressed” exemption to the tax law.⁸ Though exemptions from tax are generally strictly construed,⁹ we view treaties between tribal nations and the U.S. government in favor of Indians and from the perspective of how they would have understood the exemption.¹⁰ If an Indian taxpayer wishes to rely on a treaty-based exemption, that exemption must exist in the text of the treaty.¹¹

⁴Rule 121(b).

⁵Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff’d, 17 F.3d 965 (7th Cir. 1994).

⁶Rule 121(d).

⁷Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253. Mr. Thompson and Ms. Delisle assert that they are not Native Americans, but instead, refer to themselves as being Indians. We will respect and use their terminology.

⁸Squire v. Capoeman, 351 U.S. 1, 6 (1956).

⁹McCamant v. Commissioner, 32 T.C. 824, 834 (1959).

¹⁰Carpenter v. Shaw, 280 U.S. 363, 367 (1930).

¹¹Wynecoop v. Commissioner, 76 T.C. 101, 103-104 (1981).

Mr. Thompson and Ms. Delisle put forth two arguments on why they do not owe income taxes. First, they contend they are exempt from income tax under the Jay Treaty, the Treaty of Ghent, the Canandaigua Treaty of 1794, and others. We have previously held that members of the Mohawk Tribe are not exempt from income tax under the Jay Treaty, the Treaty of Ghent, and the Canandaigua Treaty of 1794.¹² We have also held that members of other tribes that comprise the Haudenosaunee or Six Nations are not exempt from income tax based on those treaties.¹³ We therefore cannot find that Mr. Thompson and Ms. Delisle are exempt from their income tax obligations under these treaties.

Second, Mr. Thompson and Ms. Delisle argue that they do not owe income tax because their income was derived directly from tribal land.¹⁴ An Indian may be exempt from Federal income taxes if their income is *derived directly* from *allotted* tribal land.¹⁵ The “derived directly” standard is narrowly interpreted; the activity from which the income derives must somehow deplete the land through logging, mining, farming, or ranching.¹⁶ Even if income meets the “directly derived” standard, to be tax exempt it must come from allotted land, which is land held in trust by the U.S. government and allotted to individual Indians for their exclusive use and enjoyment.¹⁷

Mr. Thompson and Ms. Delisle did not earn income derived directly from allotted land. They did not operate their businesses on allotted land. The Akwesasne Reservation own title to their land and deeded plots of land to the petitioners. Furthermore, Mr.

¹²Maracle v. Commissioner, T.C. Memo. 1991-98; Lazore v. Commissioner, T.C. Memo. 1992-404, aff’d in part, rev’d in part, 11 F.3d 1180 (3d Cir. 1993). In upholding the Tax Court’s interpretation of these three treaties, the Third Circuit found that the treaties do not exempt members of the Haudenosaunee from Federal income tax. Lazore v. Commissioner, 11 F.3d at 1185-1187.

¹³Perkins v. Commissioner, 150 T.C. 119 (2018); Sylvester v. Commissioner, T.C. Memo. 1999-35; George v. Commissioner, T.C. Memo. 1989-401.

¹⁴In support, they cite Perkins v. United States, No. 16-CV-495 (LVJ), 2017 WL 3326818 (W.D.N.Y. Aug. 4, 2017), an order from a U.S. district court in New York denying the government’s motion to dismiss for failure to state a claim. The Perkins mined gravel on Seneca Nation land and later claimed they were exempt from tax under the Indian General Allotment Act. The Perkins filed their case in this Court as well as Federal district court. We held that the Perkins were not exempt from Federal income tax under the Canandaigua Treaty or a general exemption for income derived from allotted land. Perkins v. Commissioner, 150 T.C. at 125-129.

¹⁵Squire v. Capoeman, 351 U.S. at 9; Cross v. Commissioner, 83 T.C. 561, 565 (1984), aff’d sub nom., Dillon v. United States, 792 F.2d 849 (9th Cir. 1986); Beck v. Commissioner, T.C. Memo. 1994-122, aff’d, 64 F.3d 655 (4th Cir. 1995).

¹⁶Cross v. Commissioner, 83 T.C. at 566; Beck v. Commissioner, T.C. Memo. 1994-122; see Squire v. Capoeman, 351 U.S. at 9.

¹⁷Perkins v. Commissioner, 150 T.C. at 127-128; Wynecoop v. Commissioner, 76 T.C. at 103 n.1.

Thompson and Ms. Delisle did not directly derive their income from the land. We have previously held that rental income from apartments sitting on tribal land is not income directly derived from that land.¹⁸ Telecommunication services also do not exploit the land in a way that meets the “directly derived” standard. Mr. Thompson and Ms. Delisle’s income is not exempt from Federal tax.

The Commissioner conceded the section 6662(a) accuracy-related penalties determined in the notice of deficiency because he could not meet his burden of production required under sections 7491(c) and 6751(b). Because the Commissioner cannot meet his burden of production, we find that Mr. Thompson and Ms. Delisle are not liable for the section 6662(a) penalties.

Conclusion

Mr. Thompson and Ms. Delisle are not exempt from Federal income tax under the Jay Treaty, the Treaty of Ghent, or the Canandaigua Treaty of 1794. Petitioners are also not exempt from income tax because their income is not derived directly from allotted lands. It is accordingly,

ORDERED that the Commissioner’s motion for summary judgment filed December 26, 2019, is granted. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioners for the taxable year 2015 in the amount of \$27,004; and that there is no penalty due from petitioners for the taxable year 2015 under the provisions of I.R.C. section 6662(a).

(Signed) Ronald L. Buch
Judge

Entered: **MAR 27 2020**

¹⁸Beck v. Commissioner, T.C. Memo. 1994-122.